

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5751 OF 2005

1. Smt.Kusum Bhaskar Thakur.
2. Shobha Kashinath Mhatre.
3. Vasudeo Tamdas Mhatre.

... Applicants.

Versus.

State of Maharashtra.

... Respondent.

Shri Uday Warunjikar for the Applicants.

Shri R.Y.Mirza, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 12th Sept., 2005.

P.C.:

1. Heard the learned Counsel for the Applicant and the learned A.P.P. for the State. This is an application for anticipatory bail in connection with the offence registered under sections 147, 148, 323, 322, 452, 504 and 307 read with section 149 of the Indian Penal Code.

2. The learned Advocate for the Applicants submitted that in the cross-complaint filed by the rival party, many of the accused have been granted anticipatory bail. He placed reliance on the order dated 10th August 2005 passed in Criminal Application No.4765 of 2005 as well as order dated 30th August 2005 in Criminal Application No.5409 of 2005. He submitted that the Applicants Nos.1 and 2 have played no role in the assault. He submitted that it is apparent that the Applicant No.3 has been falsely implicated by the rival party. He submitted

that the Applicants are entitled to be enlarged on anticipatory bail.

3. The learned A.P.P. pointed out that the allegations against the Applicant No.3 are that he was possessing a sword and he assaulted one Subhash Mhatre and Ramesh Mhatre. He submitted that considering the fact that there is prima facie evidence against Applicant No.3 his custodial interrogation is necessary.

4. I have considered the submissions. Applicants Nos.1 and 2 are women. There is no allegation made against them as regards possessing any weapon and as regards assault on any person. The allegation made against Applicants Nos.1 and 2 is vague and general in nature. As far as Applicant No.3 is concerned, the first informant who was a witness, has alleged that he was possessing a sword and he assaulted two persons by the sword. One of the injured person Subhash has suffered fracture of right frontal bone. The Applicant no.3 cannot rely on the order dated 30th August 2005 by which Subhash was ordered to be enlarged on anticipatory bail. What has been observed in the said order is that there is no allegation against the said Subhash that he assaulted anybody by using the axe in his hand or that he terrorised any person. The Applicant No.3 cannot claim parity on the basis of an order passed in favour of accused in alleged cross-case. In the present case,

the allegation against the Applicant No.3 is of assaulting atleast two persons by sword. Hence Applicant No.3 cannot be granted any relief though the Applicants Nos.1 and 2 are entitled to be granted anticipatory bail.

5. At this stage, the learned Advocate appearing for the Applicants submitted that the Applicant No.3 is willing to surrender before the concerned court and a reasonable time may be granted with liberty to apply for regular bail. Considering the facts and circumstances of the case the said prayer deserves to be granted.

6. Hence the following order is passed:

(i) In the event of the arrest of the Applicants Nos.1 and 2 in connection with C.R.No.73 of 2005 registered at Pen Police Station, Dist.Raigad, the said Applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.5000/- each with one or two sureties in the like amount.

(ii) The Bail is granted subject to condition that the Applicants Nos.1 and 2 will attend the concerned Police Station as and when called upon to do so till the filing of the

charge sheet and will cooperate with the investigation.

(iii) The Bail is granted subject to condition that the Applicants Nos.1 and 2 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/ Investigating Agency. The Applicants Nos.1 and 3 shall not tamper with the prosecution evidence.

(iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(v) This order will enure to the benefit of the Applicants Nos.1 and 2 only till charge sheet is filed. Thereafter they will be free to apply to the appropriate Court for appropriate relief.

(vi) The Application is rejected in so far as the Applicant No.3 is concerned. Time is granted to the Applicant No.3 till 20th

September 2005 to surrender before the appropriate Court. The Applicant No.3 shall give notice to the Investigating officer of the date on which he proposes to surrender.

(vii) It will be open for the Applicant No.3 to apply for regular bail before the appropriate Court and if such an application is made, the same shall be decided as expeditiously as possible.

(viii) Application is disposed of in above terms.

(ix) The parties to act upon an authenticated copy of this order.

Judge.